

Chapter 18
**Individuals' Comments
on the 2000 REIR/SEIS**

RInd
1

October 20, 2000

Kurt Ladensack
Water Supply Improvements Division
EBMUD
MS #305
P.O. Box 24055
Oakland, CA 94623

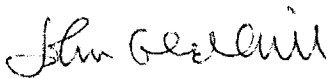
The "public" meeting held in your Oakland office October 19, 2000, was a blatant sham.

You sent out meeting notices late to keep public attendance to a minimum. You gave the most cursory overview of the project, saying that there were no significant environmental impacts, and then did not allow questions from the audience. You stacked the agenda with speakers who were elected representatives of the communities who are the beneficiaries of your services.

This meeting did not even attempt to give the illusion that public opinion would receive any consideration.

RInd1-1

Sincerely,



John Gledhill
1610 Taylor Street #1
San Francisco, CA 94133

Response to Comment of Mr. John Gledhill

RInd 1-1, John Gledhill

Reclamation and EBMUD regret any misunderstandings or inconveniences experienced by the commenter. Public meeting notices were prepared and distributed consistent with state and federal law and regulations. The purpose of the October 19, 2000 meeting was to gather public comments on the 2000 REIR/SEIS as part of the environmental review process. All comments received on both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS have been responded to and are included in this document.

Cynthia A. Melendy

◆◆◆
640 Oakes Boulevard ◆ San Leandro, CA 94577-3036 ◆ USA
Phone (510) 589-2691

RInd
2

Response to Comment of Ms. Cynthia A. Melendy

RInd 2-1, Cynthia A. Melendy

The commenter's opposition to alternatives that would deliver water to EBMUD from the lower American River is noted, as is support for Alternative 6 or 7.

October 20, 2000

Mr. Kurt Ladensack
Water Supply Improvements Division
EBMUD, MS # 305
P.O. Box 24055
Oakland, CA 94623

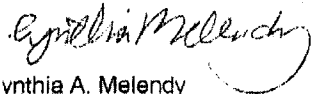
RE: Draft REIR/SEIS

Dear Mr. Ladensack,

I was not able to attend any meeting, but I do not support any alternative that takes water out of the American River. The environment and aesthetic consequences are too great.

I think we as customers of EBMUD should pay for treatment and get water out of the Sacramento River. I prefer Alternative 6 (or Alternative 7).

Sincerely,



Cynthia A. Melendy

cc: Mr. Robert Schroeder

RInd2-1

RInd
3

Thomas Mouzes
12530 Plum Lane
Wilton, California 95693
(916) 687-6553
(209) 368-1368 (W)

October 24, 2000

Fax and Regular Mail

Kurt Ladensack
East Bay Municipal Utility District
MS# 305
P.O. Box 24055
Oakland, CA 94623

Robert Jung
East Bay Municipal Utility District
MS #305
P.O. Box 24055
Oakland, CA 94623

Gentlemen,

As I explained to Mr. Jung on October 20, 2000, on the evening of October 19, I received in the mail the notice of the public meeting on October 17 in Sacramento and on October 19 in Oakland for the revised EIR for the Supplemental Water Supply Project of EBMUD. The notice was received two (2) days after the public meeting in Sacramento, (the place I would attend the meeting) and on the evening of the day of the hearing in Oakland, approximately one hundred miles from my home. I do not understand how EBMUD can give notice of a hearing and invite the public to participate when the notice sent arrives two (2) days after the public meeting occurs. This runs afoul of basic concepts of fairness and procedural due process. As I told Mr. Jung, the public hearing in Sacramento must be rescheduled and proper notice given so citizen participation can occur.

RInd3-1

Please advise me regarding this matter as soon as possible

Sincerely,


Thomas Mouzes

cc Robert Schroeder

Response to Comment of Mr. Thomas Mouzes

RInd 3-1, Thomas Mouzes

Reclamation and EBMUD regret any misunderstandings or inconveniences experienced by the commenter. Public meeting notices were prepared, published in local newspapers, and distributed consistent with state and federal law and regulations. The purpose of the October 17 and 19, 2000 meetings was to gather public comments on the 2000 REIR/SEIS as part of the environmental review process. All comments received on both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS have been responded to and are included in this document.

RInd
4

Gilbert G. Bendix, P.E.
266 Lake Drive
Kensington, CA 94708

1 November 2000

Mr. Kurt Ladensack
Water Supply Improvement Division
EBMUD, MS #305
P.O. Box 24055
Oakland, CA 94623

RE: EBMUD/USBR Supplemental Water Supply Project – October 2000

Dear Mr. Ladensack:

First of all, your *Fact Sheet & Public Meeting Notice* advising me of the availability of the Draft REIR/SEIS and of the hearing dates on 17 and 19 October 2000 arrived in my mailbox on the afternoon of 19 October, hardly in a timely manner to allow me to read and comment intelligently on the document on either of the scheduled dates. It is therefore requested that you schedule additional hearing dates with adequate notice.

I have not read the entire document, but the early pages already reveal a number of misstatements and unwarranted assumptions, to wit:

On page S-3, we are told: "Because EBMUD has already undertaken extensive conservation measures, it is more difficult to achieve additional water savings during droughts." That is a half-truth. Yes, EBMUD took a step forward in conservation by introducing a four-tier rate structure to discourage water waste, but then it backtracked by eliminating the fourth tier. It would not be "difficult" to reinstate the fourth tier. EBMUD took a courageous step by insisting that it could not deliver water to Dougherty Ranch, but they also backtracked on that position. The above-quoted sentence from your document lacks credibility as long as EBMUD takes one step backward after every two steps forward on conservation.

On page S-4, you state that if maintenance or disaster would put Pardee Reservoir out of service, "...if the terminal reservoirs could not provide an adequate supply to meet customer demand until Pardee Reservoir and Dam and EBMUD's delivery facilities resumed operation, no other source of water would be available to EBMUD, and its customers could experience severe shortages in supply." This statement ignores the fact that EBMUD's service area is part of a metropolitan area, and that EBMUD could arrange to receive water from other agencies. During the drought of the late 1970s, Marin County received water from the State of California. Said water was delivered by the State to San Francisco's San Antonio Reservoir, then traveled through San Francisco

mains, City of Hayward mains and EBMUD mains to and across the Richmond-San Rafael Bridge. In the years following that drought, EBMUD General Manager Gilbert and San Francisco Water Department General Manager Kelleher were exploring the possibility of a major intertie between the EBMUD and Hetch Hetchy systems, so that either system could come to the rescue in case of a major outage in the other. The *San Francisco Chronicle* of 27 October 2000 reports that just such an intertie is in the making between San Francisco and the Santa Clara Valley Water District and that "officials hope to have it completed within a year." Why was the intertie option ignored in your document? Were your minds made up that nothing but the American River would do?

Starting on page 2-1 and continuing on page 2-2, we are assured that "because these commitments are part of the project, they have not been specifically described as mitigation measures in subsequent chapters of this REIR/SEIS." There follows a long list of subjects. The reader can be excused for assuming that each of these topics will be described in detail as part of the project description for each alternative. I decided to check out just one item on the list: "Fire control plan." To my surprise, I could not find a single reference to such a plan in the entire document. I went back to the original Draft EIR/EIS. I found one short paragraph without a single detail on page 2-5. It essentially said a plan would be developed later. I then looked at the List of Preparers to see whether it included any firm with capability in fire protection engineering or any licensed fire protection engineer. I found none. A subject relating to public safety was kissed off without the input of anyone qualified to deal with the subject. Were the "commitments" on the other topics that you chose not to mitigate because "they are part of the project" similarly swept under the rug?

Thank you for paying attention to my comments and questions. I hope that hearings on the next Draft of this document will be noticed in a more timely manner.

Sincerely,

Gilbert G. Bendix, P.E.

cc: David Richardson

RInd4-1

RInd4-2

RInd4-3

RInd4-4

Responses to Comments of Mr. Gilbert G. Bendix, P.E.

RInd 4-1, Gilbert G. Bendix, P.E.

Reclamation and EBMUD regret any misunderstandings or inconveniences experienced by the commenter. Public meeting notices were prepared, published in local newspapers, and distributed consistent with state and federal law and regulations. The purpose of the October 17 and 19, 2000 meetings was to gather public comments on the 2000 REIR/SEIS as part of the environmental review process. All comments received on both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS have been responded to and are included in this document.

RInd 4-2, Gilbert G. Bendix, P.E.

As described extensively in Chapter 1 of the 1997 Draft EIR/EIS, EBMUD has aggressively pursued urban water conservation practices. The Updated WSMP EIR, completed in 1993 and incorporated by reference, describes these practices, different alternatives, and EBMUD's long-term conservation strategies. Detailed analysis of urban water conservation is outside the scope of the environmental analysis required for the Supplemental Water Supply Project.

RInd 4-3, Gilbert G. Bendix, P.E.

None of the local water purveyors in the Bay Area would have sufficient water supplies to provide water to EBMUD's over 1.2 million water users and several major industrial users in the event of an outage of EBMUD's Mokelumne River facilities. Therefore, as part of reasonable and prudent planning, EBMUD's project objectives include provision of an emergency supply in the event of such an outage. Of the alternatives considered, only Alternatives 2 and 3 would provide EBMUD's full outage need. The remaining alternatives could supply a portion of that need.

RInd 4-4, Gilbert G. Bendix, P.E.

As noted in the comment, a more detailed description of these environmental commitments is included in Chapter 2 of the 1997 Draft EIR/EIS. These commitments consist primarily of measures that are considered standard construction management practices. They are not spelled out in detail because, for example, it would be premature to develop a detailed fire management plan before a project is selected and before a detailed construction plan has been developed. Each of these commitments requires EBMUD and Reclamation to work with appropriate local and state agencies to develop detailed and site-specific plans to address typical construction-related issues.

11/01/2000

Mr. Kurt Ladensack
Water Supply Improvements Division
EBMUD, MS #305
P.O. Box 24053
Oakland, California 94623

Dear Mr. Ladensack:

Subject: Comments on Draft REIR/SEIS

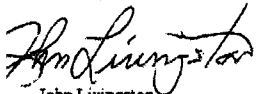
As a citizen concerned about the future of water usage in California I find it unrealistic that EBMUD can continue to fulfill the three NEEDS as given in the document. These are 1) A reliable water supply to protect the East Bay's economic well being, 2) A high quality water supply to assure the public health and 3) An environmentally sensitive means of meeting the water supply needs of customer. These lofty NEEDS cannot be met with the high demand on our water resources. In fact the NEEDS are not really NEEDS at all but merely WANTS. Needs are things that we cannot live without. Wants are things that we would like to have but are not life threatening. By taking more water out of the American River there is necessarily less for the fish and the City of Sacramento. What about the NEEDS of Sacramento. The fish and ecosystem along the American river that depend on its flows have no say in verbalizing their NEEDS. The economic well being of the East Bay cannot be guaranteed due to ever increasing uncontrolled population. The farmers want more water, the fish need more water, and Southern California grabs water by virtue of its voting power. Where is all the water needed to provide EBMUD with all its NEEDS.

Water conservation is the strongest way to reduce the volume of water we consume. I don't see anyone in California on rationing but in the very near future it will become mandatory. Swimming pools will have to go. Community pools will only be available for the masses unless you can pay the high price to buy water from someone that is willing to go without. Losses to evaporation will have to be significantly reduced and use of gray water and reclaimed water must become the norm rather than merely the demonstration project that makes the trade publications and awards in the national contests.

The document that contains five new alternatives suffers from the faults of the original document. All the water diversion routes drain water from the flow through Sacramento and into the Delta and out to the Ocean. We must reverse the ever thirsty human bodies that want more water. Everyone NEEDS more water. It looks like the release of water down the entire American River and Sacramento River systems and down to the Delta is the least environmentally impacted alternative. At least the water will benefit the ecosystem on its way to the pumping plant in the south Delta and the effluent from the East Bay wastewater treatment plants will enter the Bay. Why isn't there a pumping plant in the Delta. Take it out where the water quality is suitable for treatment.

I urge you to reconsider taking any more water to fulfill the NEEDS of the East Bay. You will never satisfy your NEEDS. Ten years from now you will be asking for more and it will never end. You know this but are not courageous enough to tell your directors. Stop the drain.

Sincerely,



John Livingston
2378 Waldon Street
Redding, California 96001

RInd
5

RInd5-1

RInd5-2

Responses to Comments of Mr. John Livingston

RInd 5-1, John Livingston

As described extensively in Chapter 1 of the 1997 Draft EIR/EIS, EBMUD has aggressively pursued urban water conservation practices. The Updated WSMP EIR, completed in 1993 and incorporated by reference, describes these practices, different alternatives, and EBMUD's long-term conservation strategies. Detailed analysis of urban water conservation is outside the scope of the environmental analysis required for the Supplemental Water Supply Project.

RInd 5-2, John Livingston

The commenter's preference for a Delta delivery alternative (Alternative 8 in the 2000 REIR/SEIS) is noted. Alternative 8 does include a pumping plant and treatment facilities in the Delta.

November 6, 2000

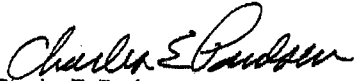
Mr. Kurt Ladensack
Water Supply Improvements Division, EBMUD, MS #305
P.O. Box 24055
Oakland, CA 94623

Dear Mr. Ladensack,

I am submitting the following comments regarding the EBMUD/USBR Supplemental Water Supply Project:

1. I definitely oppose taking any water from the American River. Therefore, alternatives 2, 3 and 4 should not be considered.
2. Alternative 5 should not be considered because the construction of the proposed pipeline would negatively impact the City of Sacramento.
3. Alternative 6 might be acceptable, but it appears that there could be some disruption of urban development.
4. Alternatives 7 and 8 seem to be the most reasonable alternatives.

Sincerely,



Charles E. Paulsen
1220 Fay Circle
Sacramento, CA 95831-2257

RInd
6

Responses to Comments of Mr. Charles E. Paulsen

RInd 6-1, Charles E. Paulsen

The commenter's opposition to Alternatives 2, 3, and 4 is noted.

RInd 6-2, Charles E. Paulsen

The commenter's opposition to Alternative 5 due to construction impacts is noted.

RInd 6-3, Charles E. Paulsen

The commenter's opinion regarding Alternative 6 is noted.

RInd 6-4, Charles E. Paulsen

The commenter's view that Alternatives 7 and 8 seem to be the most reasonable is noted.

RInd6-1

RInd6-2

RInd6-3

RInd6-4

November 6, 2000

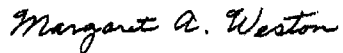
Mr. Kurt Ladensack
 Water Supply Improvements Division, EBMUD, MS #305
 P.O. Box 24055
 Oakland, CA 94623

Dear Mr. Ladensack,

Regarding the EBMUD/USBR Supplemental Water Supply Project I am submitting the following comments:

1. I absolutely oppose taking any water from the American River. Therefore, alternatives 2, 3 and 4 are unacceptable. | RInd7-1
2. Alternatives 5 and 6, and the necessary pipelines through the City of Sacramento, would negatively impact the City of Sacramento with construction of these pipelines and should not be considered. | RInd7-2
3. The remaining alternatives (7 and 8) seem to be the most reasonable alternatives with alternative 8 being the most favorable. | RInd7-3

Sincerely,



Margaret A. Weston
 7007 La Cuesta Lane
 Citrus Heights, CA 95621-4208

RInd
7

Responses to Comments of Ms. Margaret A. Weston

RInd 7-1, Margaret A. Weston

The commenter's opposition to Alternatives 2, 3, and 4 is noted.

RInd 7-2, Margaret A. Weston

The commenter's opposition to Alternatives 5 and 6 due to construction impacts is noted.

RInd 7-3, Margaret A. Weston

The commenter's view that Alternatives 7 and 8 seem to be the most reasonable is noted.

RInd
8

November 10, 2000

Kurt Ladensack
Water Supply Improvements Division
EBMUD, MS#305
P.O. Box 24055
Oakland, CA 94623

Subject: EBMUD/USBR Supplemental Water Supply Project

Dear Mr. Ladensack:

The most viable option to meeting the EBMUD water needs does not appear to be included in the alternatives presented in the EBMUD/USBR Supplemental Water Supply Project Draft EIR.

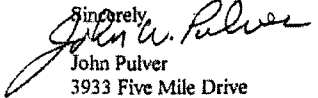
The regional concerns that must be dealt with in order to reduce resistance to any project include the following:

- Meet the EBMUD need for supplemental water.
- Meet the need for environmental and aesthetic protection of the American River.
- Meet the obligation of the USBR to comply with its Contract requirements.
- Abide by all State and Federal laws and court decisions.
- Develop a project that will help to meet regional water supply needs while preserving existing regional water supply sources.
- Be affordable to all.

None of the alternatives meet all of these requirements and would be expect to meet resistance that may be insurmountable.

A project that has the opportunity to meet the concerns is one that would take water from Nimbus only during wet years when the environmental and aesthetic needs could be reasonably met and would store that water in Southern Sacramento County and San Joaquin County aquifers for use by EBMUD during dry years. There would be a need to revise the USBR contract and clarify the plan with the court. This concept has the opportunity to meet all concerns while providing an economical and environmentally sound project.

The exclusion of a project that is not compatible with the regional needs and concerns, results in an inadequate EIR and will likely result in continued opposition to a much-needed project.

Sincerely,

John Pulver
3933 Five Mile Drive
Stockton, CA 95219

Responses to Comments of Mr. John Pulver

RInd 8-1, John Pulver

The alternatives evaluated in both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS meet all or most EBMUD's project objectives and also are consistent with the concerns expressed in this comment to varying degrees.

RInd 8-2, John Pulver

As noted on page 1-12 and 1-13 of the 1997 Draft EIR/EIS and on 18-1 of the 2000 REIR/SEIS, EBMUD has pursued groundwater storage options in San Joaquin County for a decade with little success. EBMUD continues to be interested in such a program if and when it can be sufficiently developed and appropriate agreements can be reached. At that time, additional project-specific environmental documentation would be required.

RInd8-1

RInd8-2

RInd
9

William L. Berry, Jr.
3420 Brookside Way
Carmichael, California 95608
(916) 965-6276

November 14, 2000

Mr. Kurt Ladensack
Water Supply Improvements Division
East Bay Municipal Utility District
MS #305 - P.O. Box 24055
Oakland, California 94623

Mr. Robert Schroeder
U.S. Bureau of Reclamation
Central California Area Office
7794 Folsom Dam Road
Folsom, California 95630

Re: Draft Recirculated EIR and Supplemental EIS for EBMUD Supplemental
Water Supply Project

Dear Mr. Ladensack and Mr. Schroeder:

I submitted comments on the 1997 Draft EIR/EIS in a letter to Mr. Ladensack dated March 12, 1998. On review of the new Draft REIR/SEIS ("new draft"), I am disappointed to find that my principal concerns in 1998 still hold.

1. Alternative 2, for Diversion of American River Water at Nimbus, and Alternatives 3 and 4, for Diversion Near the Mouth of the American, Pose Significant Environmental Threats and Should Not Be Placed on a Par with Diversion from the Sacramento River or Delta.

EBMUD and Reclamation, after an outpouring of public comments on the 1997 draft, have evaluated additional alternatives, reconsidered impact assessment methodology, and produced the new draft. After all this activity, though, they persist in the conclusion that "None of the alternatives is clearly environmentally superior," and that "few significant unavoidable environmental impacts would result from implementation of any of the action alternatives."

In my view, this claim of environmental neutrality defies facts and logic, and is explainable only as "cover" for EBMUD's dogged determination to take its contract water at Nimbus under Alternative 2.

While the new draft does not expressly give preferred status to the Nimbus project, that preference is implicit in the "History" portion of the document and in the CH2MHill technical memorandum attached as Appendix B. It has also been made clear in EBMUD's actions and pronouncements in dealing with Sacramento interests over the past several years.

As a general proposition, it seems obvious that a project for the upstream capture and artificial conveyance of river water to a distant purveyor, for the exclusive benefit of that purveyor, is environmentally inferior to one that allows the water to stay in the river and

Messrs. Ladensack and Schroeder
Draft REIR/SEIS, EBMUD
November 14, 2000

Page 2

flow naturally to a point near the purveyor, serving beneficial instream uses along the way. To find more specific deficiencies in EBMUD's upstream diversion alternatives one need only look to a sister agency of Reclamation and to the project proponents' own contractual dealings.

US Fish and Wildlife Concerns

The US Fish and Wildlife Service, in a memorandum to Reclamation's Regional Director dated January 7, 1999, takes Reclamation to task concerning "consultation" on the Reclamation/EBMUD amendatory contract then proposed and the 1997 Draft EIR/EIS underlying that contract. The following excerpts are illustrative of Fish and Wildlife's serious objections:

"...Reclamation's PROSIM (hydrologic) modeling indicates that implementation of this water service contract results in adverse effects on the Delta baseline that cannot be compensated for by operational adjustments with existing environmental commitments." (Emphasis added.)

"... If EBMUD's water is diverted at Nimbus, it would reduce Folsom Reservoir storage, and may induce reductions in the American River in stream flows and possibly affect water temperatures for anadromous fish restoration. If EBMUD's diversions are from the lower American River the effect on Folsom storage and American River flows may be reduced. However, we anticipate that either diversion location will decrease flows into the Delta. It is also likely that the direct effects on Folsom storage may have indirect effects on Shasta Reservoir storage. This could result in the degradation of the environmental measures in the Sacramento River and possibly some of the Delta actions... It remains unclear to us how Reclamation can conclude that diversions for EBMUD will have no 'demonstrable' effect on environmental conditions in the Delta..." (Emphasis added.)

On inquiry to Fish and Wildlife's local office, I am told that issues raised in the above memorandum are still outstanding, and that Fish and Wildlife has not received information from Reclamation that would enable it to complete consultation and prepare a biological opinion concerning the proposed contract.

Even more telling, the Fish and Wildlife official with whom I spoke was not aware of the new Draft REIR/SEIS. I find no mention in that draft of Fish and Wildlife concerns, much less any attempt to resolve them.

One may conclude that there is a communications breakdown between two agencies of the federal government that should be working together to assure the environmental integrity of EBMUD's project. As in the past, Reclamation appears to be forging ahead in concert with EBMUD, restricting its role to water broker and contractor sponsor, in disregard of its broader responsibilities to balance and protect public values in the Lower American River and the Sacramento River system as a whole.

Concerns Raised by the Reclamation/EBMUD Proposed Amendatory Contract

The new draft assumes, in describing project alternatives, that the Hodge Decision protections for the Lower American would apply to Alternatives 2, 3, and 4. However, the Reclamation/EBMUD amendatory contract proposed last year says just the opposite -- and

RInd9-2

RInd9-1

RInd9-3

Messrs. Ladensack and Schroeder
Draft REIR/SEIS, EBMUD
November 14, 2000

Page 3

the new draft makes it clear that the amendatory contract is still proposed, without change (Introduction to Chapter 2). This contract, among other things:

- Completely omits the Hodge Decision flow and storage limitations;
- Gives EBMUD annual entitlement options allowing it to divert substantially more water in dry years than permitted under Hodge; and
- Violates the Hodge prohibition of sales of American River water to third parties, authorizing EBMUD to make such sales with Bureau approval.

Essentially, the contract reflects the view of Reclamation Area Manager Thomas Aiken, in a January 21, 1999 letter to Frank Cirill of Save the American River Association, that Reclamation is not bound by the Hodge Decision and is free to operate its American River facilities as it wishes, subject to water rights permits and licenses.

In this background, the passing references to the Hodge Decision in the new draft hardly stand as a commitment to abide by that decision. To the contrary, we can expect further efforts to dismantle Hodge, in the amendatory contract, in court proceedings, and in operating practices, once a diversion project is in place. EBMUD's lack of storage facilities for wet year diversions underscores this threat. When we are told in Chapter 3 that EBMUD diversions from the Lower American "would result in negligible changes in flow because deliveries generally occur when river flows greatly exceed minimum instream flow requirements," the qualifying term "generally" looms large.

Unless the project proponents promulgate a new amendatory contract, providing for compliance with Hodge in complete, specific, enforceable terms, the REIR/SEIS should assume that EBMUD would pursue the Nimbus project or other Lower American alternative without Hodge protections. On that assumption, the REIR/SEIS should fully account for the resulting, very severe environmental impacts on the Lower American.

2. The Draft REIR/SEIS Deals with the EBMUD Project in Isolation, Failing to Examine Project Alternatives in the Context of Overlying Water Planning in California.

The CALFED Program

The new draft briefly mentions the CALFED program in Chapter 3, noting that CALFED will "change water supply management in the future." However, it sidesteps any analysis of the interrelationship of the EBMUD project and CALFED. On the rationale that implementation of CALFED programs is a long-term process: "...the water supply demands, instream flow requirements, and applicable Delta water quality objectives are assumed to remain unchanged."

This assumption appears nonsensical. What is CALFED, if not a coordinated effort to change water demands, flow requirements, and the rest to accommodate to current supply and demand realities, and salvage the Delta ecology and water transfer system? Some of these changes are discernible now, in the deliberations of CALFED committees, the CALFED Programmatic EIR/EIS issued last June, and the Framework Agreement

RInd9-4

Messrs. Ladensack and Schroeder
Draft REIR/SEIS, EBMUD
November 14, 2000

Page 4

announced in August. Certainly, it is fair to assume that CALFED objectives run exactly counter to another large upstream diversion project, depleting inflow to the Sacramento River and Delta, when water left in the river system could be taken for project purposes from the Delta itself.

The Sacramento Water Forum

The Sacramento Water Forum agreement completed last spring is the culmination of years of negotiations by interest groups in the Sacramento region to allocate available water resources among development needs while preserving values of the Lower American River. This widely acclaimed agreement would be seriously jeopardized by EBMUD's Alternative 2. Yet, the new draft does not address that threat. This omission is all the more puzzling in that Reclamation, though not an official stakeholder, is the prime governmental steward of the Lower American and participated in the Forum process throughout.

The Forum stakeholders made allowance for EBMUD diversion near the mouth of the Lower American, the Alternative 3 project pursued by Sacramento interests and entertained by EBMUD during the Forum negotiations. But the disruptive prospect of EBMUD diversion at Nimbus was set aside, to be treated as a "changed condition" if it occurred, requiring action by the Water Forum Successor Effort.

Alternative 3 is now clearly problematical, given a breakdown in negotiations between the parties, EBMUD's continuing refusal to give up diversion at Nimbus, and Reclamation's proposed amendatory contract condoning the Nimbus alternative, without Hodge protections. Should Reclamation and EBMUD proceed with the Nimbus project, the entire Forum allocation plan would have to be revisited and the diversion commitments of water purveyor stakeholders renegotiated, a process that could unravel the agreement and open the litigation wars the Forum was designed to avoid. The effects on the Lower American and its fisheries and general ecology could be huge -- but they are totally ignored in the new draft.

3. EBMUD's Press for Upstream Water Comes Down to Esthetics and a Strong Attachment to the Past. These Concerns Are Far Outweighed By the Serious Environmental Impacts of Upstream Diversion.

EBMUD's water quality/public health argument against diversion from the Delta or Sacramento River is undone by the fact that millions of Californians drink water from the Delta without apparent health problems. Granted, everyone would like pristine mountain water to flow from the tap, but such water elitism is simply not a realistic, environmentally supportable goal in this era of burgeoning demands upon limited resources. The days in which municipal populations on the coast could reach out long distances for Sierra water supplies, without regard to other communities or the life of the river invaded, should be far behind us.

Also, as one who lives close to the Lower American, I can say that this river, as treasured as it is by all in this region, is not pristine mountain water. The foothill country in the upper watershed of the American is under intensive development and the lower watershed is essentially urban, with all associated ills, including polluted stormwater runoff and sewage spills. Giardia and cryptosporidium are a threat here, as they are in the Delta. The Carmichael Water District is now completing a \$25 million filtration plant project to meet federal and state surface water treatment requirements.

RInd9-5

RInd9-6

Messrs. Ladensack and Schroeder
Draft REIR/SEIS, EBMUD
November 14, 2000

Page 5

Since significant treatment will be required wherever EBMUD takes its water, it should not be a major issue. Costs of treating Delta water may be larger, but that cost increment should be more than offset by the additional conveyance and storage costs associated with an upstream diversion project.

Finally, EBMUD's thirst for higher quality upstream water seems inconsistent with its willingness to consider storage in groundwater banks as outlined in Chapter 18, where water exported from the American would mix with existing groundwater and could be exposed to any number of groundwater contaminants.

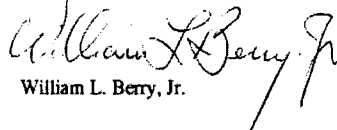
* * *

In sum, EBMUD's proposals for taking water directly from the Lower American are as outdated as the Auburn Dam project upon which EBMUD's 1970 contract with Reclamation was predicated. These proposals do not deserve to be rated equally with downstream diversion alternatives. California cannot afford a return to the Owens Valley/Hetch-Hetchy single-beneficiary mode of water development. The water desired by EBMUD, if left in the river system, will flow naturally to EBMUD's back door, with significant benefits not just to that agency, but also to the environment, the Sacramento region, and the state as a whole.

RInd9-7

Thank you for consideration of these comments.

Sincerely,



William L. Berry, Jr.

cc: Dianne Feinstein, US Senate
Barbara Boxer, US Senate
Robert Matsui, US House of Representatives
Douglas Ose, US House of Representatives
Roger Dickinson, Chair, Sacramento County Board of Supervisors
Keith DeVore, Chief, Water Resources, Sacramento County
James Sequeria, Director of Utilities, City of Sacramento
Bill Edgar, Interim Executive Director, Water Forum
Board of Directors, Carmichael Water District
Alan Wade, President, Save the American River Association
Ron Stork, Friends of the River

Responses to Comments of Mr. William L. Berry, Jr.**RInd 9-1, William L. Berry, Jr.**

The impact analysis conducted for the Supplemental Water Supply Project in both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS concludes that any of the alternatives considered would have slight environmental impacts and that the different alternatives result in various trade-offs of environmental impacts. Based on thorough review of the available information, these impacts were determined to be less than significant. Reclamation and EBMUD also acknowledge that, by placing a minor new demand on the Central Valley Project (CVP) system, the Supplemental Water Supply Project would contribute slightly to projected cumulative impacts resulting from increased demands on the American River system. These impacts would occur and be essentially identical regardless of whether deliveries are made to EBMUD at an upstream location (including Nimbus), as indicated in the Final EIR for the Water Forum Proposal, in addition to the 1997 Draft EIR/EIS and the 2000 REIR/SEIS. EBMUD has proposed to contribute a proportional share to regional programs to mitigate such cumulative impacts.

RInd 9-2, William L. Berry, Jr.

Reclamation has been consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service as required under the Endangered Species Act. Reclamation has been meeting regularly with these agencies and has provided substantial information to them over the past several months. Reclamation will continue to meet with these agencies, as needed, as part of the consultation process.

RInd 9-3, William L. Berry, Jr.

As described in the 1997 Draft EIR/EIS, Alternative 3, Joint Water Supply, would require that the parties to the Hodge Decision work

together with the court to amend that decision to provide for the operation of that alternative. All other alternatives considered in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS are fully consistent with the Hodge Decision. The draft amendatory contract does not "violate" the Hodge Decision, nor does it allow EBMUD to take any action that is not consistent with the requirements of the Hodge Decision. It is important to note that the Hodge Decision affirmed EBMUD's right to make use of its contract with Reclamation. The terms of the Hodge Decision apply to EBMUD's ability to take delivery and make use of water from the lower American River. Because this limitation exists regardless of whether it is in the amendatory contract or not, Reclamation and EBMUD chose to refer to the decision in the current draft generically as having to comply with all applicable state and federal law and judicial decisions.

RInd 9-4, William L. Berry, Jr.

See the response to the "Relationship to CALFED" major issue in Chapter 3 of this document.

RInd 9-5, William L. Berry, Jr.

The 1997 Draft EIR/EIS and the 2000 REIR/SEIS focus on the physical changes to the environment that could result from implementation of the project alternatives, as required by CEQA and NEPA. It is not possible to predict the effect of the selection of Alternative 2 on an agreement or process such as the Water Forum effort. The final EIR for the Water Forum Proposal contains a new cumulative impact analysis that includes an EBMUD delivery at Nimbus. The final EIR concludes that cumulative impacts with an EBMUD delivery at Nimbus would not differ substantially from the impacts identified in the cumulative analysis in the Draft EIR for the Water Forum Proposal.

RInd 9-6, William L. Berry, Jr.

See response to the "Alternatives Considered" major issue in Chapter 3 of this document.

RInd 9-7, William L. Berry, Jr.

Commenter's preference for a downstream alternative is noted.

RInd
10

November 15, 2000

2

Mr. Kurt Ladensack
East Bay Municipal Utility District
c/o Water Supply Improvement Div., MS #305
P.O. Box 24055
Oakland, CA. 94632-1055

Mr. Robert Schroeder- Environmental Specialist
Central California Area Office
U.S. Bureau of Reclamation
7794 Folsom Dam Road
Folsom, CA 95630

Dear Sirs:

Subject: Comments on the DRAFT REIR for East Bay Municipal Utility District's
Supplemental Water Supply Project. DRAFT REIR cover letter dated
Oct. 6, with material received Oct. 17, 2000.

The DRAFT REIS should be withdrawn until a real project with clear operating criteria meeting EBMUD's project needs has been identified as the preferred alternative. At that time, a revised DRAFT Recirculated Environmental Impact Statement should be submitted for public review and comment.

Whether or not the above occurs, please incorporate the following comments into the record regarding the RDEIR for EBMUD's Supplemental Water Supply Project.

Overall comments

I find the project descriptions and operational plans of East Bay Municipal Utility District (EBMUD) lacking or difficult to follow. Where is the preferred alternative carefully laid out and explained for all to review and make comments? The NO ACTION Alternative should be fully explained. The "No Action Alternative" is the baseline from which all impacts (beneficial and detrimental) are measured. New technology and treatment level needed to meet State and Federal EPA -1997 Drinking Water Standards may require changes (additional treatment costs) as a part of the "No Action Alternative". This information regarding treatment is now necessary for all alternatives in order for the public to make valid comparative costs evaluations. The treatment level required to protect public health also reduces the distinction of water source.

The Central Valley population of naturally spawning steelhead is listed as *threatened* under the Federal Endangered Species Act. The Central Valley population of naturally spawning Fall- Late-Fall run of Chinook salmon remains as a "*candidate*" species for reevaluation under the Federal Endangered Species Act. The Lower American River (LAR) is designated under the Federal Wild and Scenic River Act and contains critical habitat for naturally spawning Chinook salmon and steelhead trout. Of particular concern are extreme

temperature conditions and fluctuating flows that limit natural spawning, rearing and juvenile production of Chinook salmon and steelhead. These species has been severely impacted by EBMUD's operation of its Mokelumne River facilities. The Lower Mokelumne River contains critical habitat for these species. In the past millions of Chinook salmon and steelhead eggs and fingerlings from the American River Salmon and Steelhead Hatchery were sent to the Mokelumne River Fish Hatchery so it could meet its mitigation obligation. This transfer was necessary so the Mokelumne River Fish Hatchery would have a sufficient number of fish to release in order to help maintain the runs returning to the Mokelumne River.

The primary project purpose is to meet an identified need, i.e., make water available during dry water years. The groundwater element is inadequate to do the job. The American River diversion does not meet the need. There is question whether the Sacramento River alternatives meet project needs. Therefore a Delta / Bidler / Clifton Court like facility at Orwood tract, is the most reliable and the most quickly do able. It provides flexibility in the source of available water supply, i.e. Shasta, Folsom and New Melones, blending of local and regional supplies and for purchasing water from any upstream source. It is also the only alternative that could have an overall positive benefit to improve Delta water quality; urban and agricultural supplies, fish resources and other public trust values.

Some Background

EBMUD has a water service contract with the Bureau for the delivery of up to 150,000 AF. EBMUD desires to use this contract water (it is not an entitlement as stated on S-1) to supplemental its Mokelumne River supply. The storage capacity of EBMUD's facilities when at capacity is about 766,000 AF, with 151,000 AF in Service Area and 616,000 AF in its Mokelumne River facilities of Pardee and Camanche Reservoirs (DWR Water Supply Outlook, October 29, 1999). This same reference indicates that EBMUD's historical carryover storage for the end of September is 542,200 AF; with 241,800 AF in 1977; with 378,900 AF in 1992, and with 469,500 AF in 1994. The highest end of September carryover storage being 614,200 AF in 1997 followed closely by 604,400 AF in 1998. According to the State Board's EIR for the 1995 Water Quality Control Plan (Nov. 1999), EBMUD's cumulative diversion face value is 931,874 AF with 510,000 AF cumulative direct diversion and cumulative storage 562,950 AF. Points of diversion are Indian Slough and the Mokelumne River. The 510,000 AF cumulative direct diversion could be considered EBMUD's annual and cumulative depletion of flows from total Delta inflow with impacts to fishes, other aquatic life and water quality.

Some specific comments

EBMUD wants to guarantee its customers a full water supply under drought hydrological condition as well as planned system outage or system failure. EBMUD wants to exercise its 1970 Bureau of Reclamation contract to take American River water. According to the FEIR for the Bay/Delta Water Quality Control Plan (SWRCB - Nov. 1999) enlarging Pardee Reservoir by 150,000 AF was feasible. Has EBMUD abandoned the option of maximizing its Mokelumne River source? Why hasn't the preferred alternative been selected? This failure does not inform the public of your action, but hides your actions and opens the door to political meddling and closed-door decision making.

3

The project alternatives (Chapter 2) are not clearly presented nor are their operational specific plans adequately explained and costs levels comparable. Simply stated, Alternative 1 is No Action. Please note that the "No Action Alternative" should be fully explained. The "No Action Alternative" is the baseline from which all impacts (beneficial and detrimental) are measured. New technology and treatment level needed to meet State and Federal EPA --1997 Drinking Water Standards may require changes (additional treatment costs) be a part of the "No Action Alternative". This information (additional treatment) is necessary for all alternatives in order for the public to make valid comparative costs evaluations. Alternative 2 is Folsom South Canal diversion and connection; Alternative 3 is a joint Sac. City/County/EBMUD project from the 1997 DEIS. This is not a viable option. Alternative 4 is an EBMUD only LAR diversion to Folsom South Canal and connection. To me this is not a viable option. Alternative 5 is a Sacramento River diversion point to Folsom South Canal and connection. Alternative 6 is Freeport diversion east to Folsom South Canal and connection. Alternative 7 is a Freeport diversion with a pipeline south to the Mokelumne Aqueduct and Alternative 8 is a Delta / Bixler point of diversion.

The operational plans (how much water to be diverted and when) and the treatment costs for each alternative should be spelled out for each water year type. The No Action base of treatment to meet EPA water quality criteria is needed. All alternatives should meet the same treatment level. There was a significant increase in the treatment costs between the September 18, 2000 (Feinstein/Moran) draft and the October 6, 2000 official draft. Why? What changed in that short time? Also in some cases the treated supply is blended with existing supplies. In other cases the treated supply is not to be contaminated by blending it with Mokelumne River supplies. There must be clear operational criteria and cost analysis for all alternatives before an objective analysis can be made to select a preferred alternative. The document is lacking that respect.

The Hodge physical solution and especially the Central Valley Project Improvement Act's (CVPIA) Anadromous Fish Restoration Program (AFRP) flow schedule, put protecting the LAR public trust resources, uses and values first before EBMUD could take American River water. However the Hodge physical solution did not have temperature criteria for the LAR's Chinook salmon and steelhead trout life history needs.

The Bureau has implemented the AFRP flow releases. Managing the cold water pool through temperature control devices (shutters) at the three powerhouse intakes is being accomplished by the Bureau's understanding of the problem and its ability to act accordingly. A Temperature Control Device is now being installed on the Urban Water Intake. It is hoped that this structure will be operational by next spring. This year's call for water from Folsom Reservoir to meet Delta export needs and to meet Delta Water Quality Control Plan has exacerbated the management of the cold water pool and put young and juvenile steelhead in a very precarious position. Conditions in the cold water pool have delayed Chinook salmon spawning because water temperature

4

of 60 degrees or below was not available in the river or hatchery until the first full week of November. And this was a good water year with above average runoff and there still were flow and temperature problems in the LAR. Such reservoir and flow conditions would have been exacerbated by EBMUD demands at any diversion location except a Delta / Bixler diversion.

EBMUD's LAR diversion point is not a real option. In addition, the use of the Folsom South Canal holds a gun on the LAR and Water Forum stakeholders. A question is -- Will the State Board approve a new point of diversion so EBMUD can take its water around the Delta in its own private peripheral canal?

Chapter 3 - Hydrology, Water Supply and Power. This section presents data that is inconsistent with Water Forum data or is incomplete. For example, the demand on the American River is greater than 368,000 AF for year 2030. Up date information and clarification is needed. Tables 3-2 appears to be inconsistent with Water Forum developed data. Water Forum stakeholder water use is expected to be about 481,000 AF by 2030 up from present use of about 216,500 AF (WF-2000). Why is the REIR information different?

During most years, the Bureau will make releases to the LAR to meet the AFRP flow requirements and downstream diversion demands. The plumbing proposed by EBMUD is its own peripheral canal transporting water from the American River, Sacramento River and Mokelumne River around the Delta to its Service area. How and what is EBMUD going to do to mitigate the adverse impacts to Delta water quality for agriculture, urban users, export supplies, fish resources and other trust interests by the addition to its already massive Delta depletion which could be up to 510,000 AF annually and impacts to Delta aquatic resources and water quality?

It should be recognized that impacts resulting from the operation of EBMUD's Mokelumne River projects have not been corrected by an flow regimen or hatchery operations. For the years 1989 through 1999, millions of eyed Chinook salmon eggs of Feather River and American River origin were sent to the Mokelumne River Fish Hatchery for rearing and release so the Hatchery could fulfill its production and release goals. Also hundreds of thousands of eyed steelhead eggs and fingerlings of American River origin were transferred to the Mokelumne River Hatchery for rearing and release to help it meet its production and release goals. In some years 1988-1989, 1989-90, 1990-91 and 1992-93 steelhead eyed eggs and fingerlings were also received from the Feather River (Feather River Hatchery) and from Battle Creek origin (Coleman National Fish Hatchery). There have been periodic problems of low dissolved oxygen, heavy metal and high hydrogen sulfide at the Hatchery and in the Lower Mokelumne River. People believe that it is inappropriate for the other projects to mitigate for the impacts that are a responsibility of EBMUD's operations regarding instream flows and water quality in the lower Mokelumne River.

EBMUD has touted the merits of its EBMUD/FWS/CDFG settlement. The Mokelumne River Settlement Agreement is not based on a State Board decision or an independent FERC ruling, but on a politically contrived decision that, I hope, gets exposed by a lawsuit with testimony and cross examination under oath.

A provision of the Settlement Agreement allows EBMUD wants to sell 40,000 AF to 80,000 AF of surplus Mokelumne River water to the Bureau / Fish and Wildlife Service as a part of the CVPIA's anadromous fish restoration program. Prices paid for water have ranged from \$35.00 up to \$100.00 an acre-foot. This water would help mitigate EBMUD's Mokelumne River project impacts as a way to restore public trust resources, uses and values of the Lower Mokelumne River and Delta. The funds for such a purpose would come from scarce public (restoration fund) dollars. Such a transaction may be in the parochial interest of EBMUD to help protect the resources of the Lower Mokelumne River.

Mitigation is the responsibility of EBMUD. The flow regimen needed to keep fish in good condition; to meet or protect Delta water quality for public trust purposes is a responsibility of EBMUD. In Audubon, the court ruled there is no taking issue when water is needed to protect the public trust interests involved. See National Audubon Society v. Superior court Alpine County, 33 Cal. 3d 419, 189 Cal. Rpt. 346 (1983), Racanelli, (United States v. State Water Resources Control Board, 227 Cal. Rpt. 161 - 1986) and Cal Trout v. State Water Resources Control Board, 207 Cal. App. 3d 585 (1989).

There was no taking issue regarding inflows to Mono Lake according to the Audubon Court. What then is the rational for the public to pay for water (i.e. buy back its owned water) to protect public trust interests and to keep "in good condition" (CDFG Code Section 5937) the fish and other aquatic life of the lower Mokelumne River, the Delta and San Francisco Bay? What is the Bureau's and EBMUD's rational for using non-EBMUD funds (PUBLIC DOLLARS) to mitigate and / or help offset impacts to lower Mokelumne River fish resources and Delta water quality caused by the operations of EBMUD's Mokelumne River project? Has the Bureau of Reclamation knowingly bought into this scheme? If so, - What is the Bureau's rationale? The Bureau is opposed to the MOU endorsed by South-of- the Delta contractors that would force it to provide water to backstop the settlement Agreement (D-1641 at pages 57-62).

Judge Racanelli, in his 1986 decision, (U.S. v State Water Resources Control Board), commented on the duties of the State Board. He indicated that the State Board needs to consider the impacts of all upstream diversions and uses of water and that it is essential that it take a global perspective in carrying out its water quality-planning obligation. In Audubon, the court ruled there is no taking issue when public trust interests are involved. Racanelli ruling stated that each water right holder on each tributary would contribute its fair ecological share (flows) to protect instream resources, ecological uses and values, as well as provide Delta inflow to meets water

quality standards and protect public trust interests. It is important that the global concept be applied to all streams and rivers of the Central Valley Basin.

The Hodge "physical solution" in Environmental Defense Fund v East Bay Municipal Utility District (EDF v EBMUD) (Sup. Ct. Alameda County No. 425955, January 1990), was a contemporary response for protecting and restoring the Lower American River, its fish resources, a variety of other instream uses and ecological values. The Hodge "physical solution" placed an ecological perspective on the management of the Lower American River to protect a variety of public trust resources, uses and values (Sax -1993). The Hodge "physical solution" requires about 1.75 MAF to provide minimum instream flows necessary to protect in good condition the public trust resources, uses and values of the Lower American River and contribute to Delta inflow for water quality, fisheries protection and other beneficial uses. This 1.75 MAF is about 65 percent of the average annual runoff of the American River Basin.

The EBMUD, in its fisheries management plan for the Lower Mokelumne River provides for only about 85,000 AF (about 12 percent) of the average unimpaired Mokelumne River runoff of 730,000 AF. Such a release without water quality standards is supposed to protect the Lower Mokelumne River ecosystem, provide Delta inflow for water quality protection, for public trust uses and to contribute to Delta outflow and water quality standards. This was disputed by the Fish and Wildlife Service (FWS) and California Department of Fish and Game (CDFG) before the State Board. The FWS recommended 193,000 AF annually while the CDFG recommended 207,000 AF with 262,000 AF annually in above normal and wet runoff years for the protection and restoration of Chinook salmon and steelhead resources.

Clearly Delta fish resources and water quality for urban and agricultural purposes and for export supply can not be sustained or protected if each Delta tributary contributed only about 12 percent of its annual runoff as the Mokelumne River does under EBMUD's Lower Mokelumne River Fish Management Plan. EBMUD by its present actions and Mokelumne River Settlement Agreement is not contributing its fair ecological share of instream flows to maintain the Delta pool, its quality or public trust interests.

During the 1992-93 State Board hearings on EBMUD'S Mokelumne River project, EBMUD representatives acknowledges that adequate Delta inflow is critical for maintaining the water quality necessary for agricultural, municipal and industrial purposes as well as maintaining public trust resources, uses and values. Under cross-examination of EBMUD folks, it was established that the Bixler facility is a viable solution for EBMUD to take some or all of its water because about 22 million Californians already do. Locally the Delta city of Pittsburg treats Delta water to a lower level of trihalomethanes than EBMUD's pure snow melt; Contra Costa W.D. diverts from the Delta and satisfactorily treats its water supply for municipal and industrial purposes. EBMUD representatives admitted that it could treat Delta water to the same drinking water standards as Pardee Reservoir water.

7

EBMUD with its own peripheral canal is clearly a contributor to the problem of water quality in the Delta. EBMUD by taking a major part of its supply at Bixler, would become part of the solution by protecting Delta water quality and other public trust interests.

Alternative 8 is a Bixler point of diversion. This facility and point of diversion has been licensed / permitted in the past and has been tested and was used in 1976 and again in 1977 (FWS info and EBMUD submittal to FERC and contained in FERC's DEIR on the EBMUD'S lower Mokelumne River hydro-project).

Did EBMUD or the Bureau attempt to work out an arrangement with DWR's State Water Project, to take water from Clifton Court Forebay? Has EBMUD or the Bureau investigated the possibilities of building an island reservoir (ala Clifton Court Forebay) at Orwood Tract for its use as temporary water storage and for blending purposes. If EBMUD was nice, there could be some cooperation with Contra Costa Water District for building such a facility. The construction and operation of such a facility would allow EBMUD to become part of the solution to Delta water quality / fisheries problems rather than continuing to exacerbate these problems.

The Bixler point of diversion(Orwood Tract forebay) is a must if protecting water quality of the Delta pool, protecting aquatic resources and other public trust interests are to be realized by those taking or who could take Central Valley Project (CVP) and State Water Project (SWP) deliveries from the Delta pool. Such a point of diversion would help CALFED's proposals for blending and sharing of local and regional supplies. The Bureau can help meet its Delta inflow and water quality objectives by making the point of delivery of EBMUD's contract water its Bixler facility. EBMUD can also help by taking a reasonable portion of its Mokelumne River supply released for public trust purposes at Bixler.

The list of environmental impacts is incomplete. The reader should determine the significance of the various impacts not EBMUD. There is considerable evidence that can illustrate that EBMUD's values are not the same as someone concerned about public trust interests, endangered species or selected species of anadromous fishes and Delta water quality.

Several statements are made that mitigation measures are not required or not available. This puts protecting public trust interests on less than a co-equal footing with EBMUD's water diversion. Identifying impacts and formulating mitigation actions is a primary purpose of the National Environmental Policy Act. Identifying impacts and formulating mitigation actions is a primary purpose of the document prepared under the National Environmental Policy Act. Some of the impacts are:

8

- Depletion of the cold water pool in Folsom Reservoir (all other thing being equal) will result in increased temperature of the water released which would impact the LAR ecosystem and associated resources uses and values. Any sudden or abrupt changes in water temperature could disrupt holding, spawning of adults, incubation, rearing and out-migration.
- Depletion of the cold water pool in Folsom Reservoir will increase mortality (through elevated temperature of the water supply) at the American River Trout Hatchery as well as the Nimbus Salmon and Steelhead Hatchery (NSSH). The NSSH was constructed and is operated to mitigate the loss of the upstream spawning and nursery areas once utilized by Chinook salmon and steelhead trout, but now blocked by Nimbus / Folsom dams. Salmonid fishes just about cease growing at temperature above 68 F because of increased metabolic rate. In addition increased water temperature has a synergistic effect on the several components of the aquatic ecosystem with signs of stress occurring below 68 F. This is especially so under hatchery conditions. For optimum aquatic ecosystem management, a reliable and safe water supply is required and must be assured. This includes water of acceptable quantity and quality including the range of temperature necessary for Chinook salmon and steelhead production (holding, spawning, incubation and growth) throughout the year.
- Salmonid fishes are capable of sensing a temperature differential of less than .5 F degrees. Temperature increases of released flows because of reduced volume in cold water pool will impact summering over of juvenile steelhead and could impact Chinook salmon spawning conditions (delaying the spawning time could extend to delay out migration. Spawning was delayed this year until (November 2000).
- Reduced warmwater fish habitat in Folsom, Shasta and Trinity Reservoirs (water level fluctuations as water is stored and later released to provide Delta inflow.
- Impacts to American Shad spawning and out migration resulting from reduced stream flow and outflow.
- Reduced coldwater fish habitat in Shasta and Trinity Reservoirs April thru October as increased releases are made necessary to provide water to the Delta to help maintain water quality for public trust uses and water export. These same releases could reduce coldwater needed for the winter-run Chinook salmon as well as impact fall-run Chinook salmon holding, spawning and egg survival in the upper Sacramento River. There could be similar impacts to fall-run Chinook salmon holding, spawning and egg survival in the Trinity River.

- All diversions must be adequately screened. Such screening is to reduce the impact of diversion on all fish species not just those of special concern or considered *threatened* or *endangered*. If such protection is not provided all native fishes in the area could be listed or be considered as a candidate species under the FESA. In addition the wholesale loss of egg, larva and young of such high interest species as striped bass and American shad would not look good.
- Construction of the intake as envisioned by EBMUD would be scab on the LAR scenic landscape.
- Any flow fluctuations which occur as a result of meeting EBMUD's on/off diversion demands will impact the wetted perimeter of the LAR ecosystem. These fluctuations are particularly adverse to the entire periphyton community of green algae, brown diatoms and the various developmental stages of aquatic insects and other invertebrates, basic food production. In addition at certain stream flow stages a change of .3 tenths of a foot as measured at the Fair Oaks USGS gage will result in impacts to the wetted perimeter (including dried out shallow areas and resultant heat buildup), to summer nursery and fall spawning conditions. These conditions will be magnified during periods of high air temperatures and especially so during years of below normal runoff.

All impacts should be identified. EBMUD must develop mitigation measures or actions and be ready to implement them upon contract signing. A monitoring program must be undertaken to determine if the mitigative measures or actions are doing what they were designed to do in an acceptable manner. If not, corrective action must be taken. There must be public oversight and evaluation of any mitigation measures or actions implemented.

Those impacts not mitigated or replaced in some way will constitute a subsidy to EBMUD so it can enhance its image and reduce its water costs. All this is at the expense of the public trust resources, uses and interests of the area of origin, such as Shasta and Trinity Lakes, Sacramento and Trinity Rivers, Folsom Reservoir and the Lower American River.

There is a sense that "the natural variation in hydrologic and water quality / quantity conditions are substantially larger than hydrologic changes which would result from the various EBMUD alternatives." Because of this situation environmental damage can not be demonstrated, therefore no mitigation required. The seemingly minor, less than significant impacts, attributable to this and other diversions will result in significant cumulative impacts to public trust interests of water quality and to aquatic resources of the LAR and Delta. Being bled by a 1000 cuts inflicted one at a time is still death. Is the statement damage cannot be demonstrated, EBMUD's and the Bureau's way of diminishing the impacts and dumbing its audience?

It is this same natural variation in runoff conditions / water quality / quantity conditions that stimulated many Sacramento, Placer And El Dorado stakeholders of the Sacramento Water Forum to initiate groundwater management programs. These groundwater programs implemented during dry and less than normal runoff years will at the same time help protect fish, other aquatic resources and recreational values of the LAR. Where is the EBMUD groundwater management program? What is its dry year yield of the program? Where is it located? Is any part of that program in its service area?

EBMUD indicated that mitigation measures are not required to offset or compensate for many project associated impacts or associated values, because it is proposing to contribute money to help support the Habitat Management Element (HME) of the Sacramento Water Forum Agreement. Contributing funds to a program does not constitute mitigation, nor does the purchase of land. Mitigation is the continuing responsibility of the project sponsor and beneficiary. In this instance EBMUD is the responsible party. EBMUD must come up with mitigation actions to offset project occasioned impacts. EBMUD is the one accountable for mitigating the various impacts, either on site or in close proximity of the impact area, not at some location far removed from the impacts.

EBMUD in the conduct its overall water supply facilities (including Pardee Res.), manages its reservoirs for maximum storage carry over and recreational use (EBMUD FERC submittal). By not implementing mitigation actions, EBMUD will be short changing the areas of origin recreational opportunities, resources and uses (Shasta and Trinity Lakes, Trinity River, upper Sacramento River, Folsom Reservoir and the Lower American River, while building benefits in its own service area by maximizing the storage in its reservoirs.

Summary

Much has happened since the original BR / EBMUD contract of 1970. In addition there is greater public awareness of the impacts to fish and wildlife resources, water supply, water quality for agricultural and urban uses affected by the construction and operation of the Central Valley Project and other similar projects. For Example:

- Several species of naturally produced fish dependent upon conditions of the Lower American River and the Bay/Delta system are now listed under the Federal Endangered Species Act and California Endangered Species Act. Species now listed under the Federal Endangered Species Act (FESA), include the winter-run Chinook salmon (*endangered*), Delta smelt (*threatened*), longfin smelt (*endangered*) and the Sacramento splittail (*threatened*) and the capabilities to meet Delta water quality standards. In addition the Central Valley natural spawning Fall- / Late Fall- run Chinook salmon is a candidate species, the naturally spawning steelhead are now listed as *threatened* and the spring-run Chinook salmon is listed as *threatened*.

11

- Stringent water quality standards have been established to protect Delta water quality and associated beneficial uses protected by the public trust doctrine will require increased flows through the Delta.
- The Bureau's Central Valley Project has an obligation to contribute tributary flows as well as the flows necessary for meeting the Delta water quality and outflow standards.
- Central Valley Project Improvement Act (CVPIA) commits additional water to protect instream ecosystems and associated trust purposes as well as to lands of the National Wildlife Refuge system.
- An over riding objective of the CVPIA is the equal priority for fish and wildlife (also water quality) with other beneficial uses (CVPIA Section 3406(a) (3)).
- CalFed was established, in part, to investigate water supply issues and make recommendation for providing additional water supply.
- The Central Valley watershed has been determined to be significantly drier than what was understood in 1990.
- Treatment technologies have greatly improved and standards established by EPA (EPA-1997) to allow EBMUD to safely and economically process a Delta water supply, which is already being used by 20 to 22 million Californians.
- American River Basin area-of-origin stakeholders have signed the Water Forum Agreement. This Agreement is linked to two coequal objectives: **Provide a reliable and safe water supply for the region's economic health and planned development to the year 2030; and Preserve** (provide a safe and reliable water supply for) the fishery, wildlife, recreational and aesthetic values of the Lower American River.

Conclusion

In the California society in which we live, an EBMUD Delta / Bixler, Orwood court / Indian Slough diversion point is the only **Principled** position for the Bureau to take. It is **Right** because it helps protect the integrity of the "New" Bureau. It is **Right** because it helps the "New" Bureau carry out its duties and responsibilities. It is **Right** because it helps the Bureau protect the water supply and water quality of the agriculture and urban communities utilizing Delta and export supplies. It is **Right** because it helps protect Delta -Bay resources, uses and values (public trust interests). It is **Right** because it is supported by the intent of Fish and Game Code Section 5937 and its in "good condition" for all aquatic life and life stages below a

12

dam. It is **Right** because it will help meet the objectives of the CVPIA's Anadromous Fish Restoration Program. It is **Right** because it will help meet the objectives of the State's Delta Water Quality Control Plan. And it is **Right** because it is consistent with the purpose and intent of the Mono Lake and Racanelli decisions, therefore it is in the best overall interest of the people of California.

Please incorporate these comments into the record regarding the RDEIR for EBMUD's Supplemental Water Supply Project.

Sincerely,



Felix E. Smith
4720 Tatus Way
Carmichael, CA 95608
1-916-966-2081

Save the American River Association
The Bay Institute of San Francisco
California Sportfishing Alliance
Friends of the River
Committee to Save the Mokelumne River

comments of Felix Smith 11/15/ 00 (C:EBMUDEIR2000)

Response to Comments of Mr. Felix E. Smith

RInd 10, Felix E. Smith

See responses to comments of the Save the American River Association (Letter RSp 3).

RInd
11

From: Rick Bettis <rickb@ardennet.com>
To: "rschroeder@mp.usbr.gov" <rschroeder@mp.usbr.gov>
Date: 11/19/00 10:14PM
Subject: Draft Recirculated EIR/EIS EBMUD Supplemental Water Supply Project

Mr. Robert Schroeder, Environmental Specialist
US Bureau of Reclamation
Central California Area Office
7794 Folsom Dam Road
Folsom, Ca. 95630-1799

Subject: Draft Recirculated Environmental Impact/
Supplemental Environmental Impact Statement
East Bay Municipal Utility District
Supplemental Water Supply Project

Dear Mr. Schroeder:

I commend the USBR for addressing additional alternatives to those presented in the 1997 EIR/EIS. It is recognized that the subject EIR/EIS is at the programmatic level of assessment. However, I believe that the potential impacts on recreation and fisheries on the Lower American have been understated by the report.

On page S-2 of the report it is clearly states that the first, and therefore primary, propose project is "to reduce existing and future customer deficiencies to manageable levels during drought conditions". This statement appears inconsistent with the operational studies as summarized in Chapter 3 of the report. These studies appear to be basis for the average annual delivery of 15.1 TAF that was used Table 11 to determine the Present Value of the cost per acre foot delivered shown in the Table.11 for Alternative 2. Figure 3-1 indicates that all years from 1922 to 1990 were used in the analyses to determine the average annual deliveries, not just the "drought" years. It appears that if only the drought years were used in the analyses the average annual deliveries would be very small if not minimal. This would radically altered the economic viability for Alternative 2 since it does not include a storage facility needed to carry over diversions for delivery during dry years.

In my opinion, the out of context quotation from the Hodge Decision regarding water quality and health risk on Page S-4 is not appropriate. This and other related statements appear to of an advocacy nature and should not be included in an EIR/EIS that is required by both CEQA and NEPA to be an impartial and full disclosure document.

Based on the cost and other information contained in this report it appears that Alternative 7 is the most viable of the alternatives. I strongly urge that Alternative 7 be selected as the "Preferred Alternative. This will allow this critical matter to be finally resolved after 30 years contentious debate Thank you for your consideration.

Sincerely:
Rick Bettis
1716 P Street No.9, Sacramento, Ca. 95814
(916) 442-5775, rickb@ardennet.com

Responses to Comments of Mr. Rick Bettis

RInd 11-1, Rick Bettis

The commenter's opinion regarding potential effects on recreation and fisheries in the lower American River are noted. These issues are addressed in Chapters 6 and 5, respectively, of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS.

RInd 11-2, Rick Bettis

The commenter accurately describes how the cost figures displayed in Table 11 of Appendix B to the 2000 REIR/SEIS were derived. Different methodologies would produce different cost figures. It would not be appropriate, however, to only consider EBMUD deliveries during dry years because the deliveries during wet years increase EBMUD total system storage, which then can help decrease deficiencies during subsequent dry years, even when no direct deliveries are made during those years.

RInd 11-3, Rick Bettis

The commenter's opinion regarding the appropriateness of the referenced quote is noted. The intent of the subject paragraph is to provide the reader with context regarding the recognized importance of source quality in providing drinking water.

RInd 11-4, Rick Bettis

The commenter's preference for Alternative 7 is noted.

RInd11-1

RInd11-2

RInd11-3

RInd11-4

Carson Farms
11608 Quiggle Road
Galt California 95632

November 20, 2000

Mr. Robert Schroeder
U.S. Bureau of Reclamation
Central California Area Office
7794 Folsom Dam Road
Folsom, California 95630

Dear Mr. Schroeder:

Our family has farmed in the central valley for over a half century. We have been very active in water related issues over the years as we realize that water is what sustains life both on and off the farm. Yet we have watched as the County of Sacramento, the City of Sacramento and a handful of environmentalists have all but dried up the rivers with their constant flood of demands. As incredulous as it may sound, the Sacramento parties have denied EBMUD, and the 1.2 million people that it serves, the right to the American River water for which it has a legal contract. Additionally, this has cost the people, not only in the Bay area but the Sacramento area as well, millions of dollars of hard earned money to defend what may well have been a frivolous lawsuit on behalf of the Sacramento parties. Some of our regions farm land stood idle, due to lack of a water contract, while Sacramento parties carried the lawsuit on for almost 20 years preventing EBMUD and its people from receiving the water while at the same time forgetting about its own farms that thirst for water.

The solution is simple. Allow EBMUD to divert water from Nimbus, which is the most cost-effective way to move water as it flows by gravity thereby avoiding the costly pumpback fees. EBMUD could do conjunctive use projects in both counties benefiting the groundwater basins. A Nimbus diversion would help solve the regions water issues as well as benefiting the habitat in the process. This would save the taxpayers and well as the ratepayers millions of dollars of unnecessary costs. We all know that this is the most common sense approach to not only resolving the long standing dispute, but more importantly, resolving the regions water supply issues.

Thank you for receiving these comments.

Sincerely,



Duane C. Carson

RInd
12

Response to Comment of Mr. Duane C. Carson, Carson Farms

RInd 12-1, Duane C. Carson, Carson Farms

The commenter's support for Alternative 2 is noted.

RInd12-1

RInd
13

November 20, 2000

Mr. Kurt Ladensack
East Bay Municipal Utility District
c/o Water Supply Div.
P.O. Box 24055 MS #305
Oakland, CA. 94632-1055

Mr. Robert Schroeder
Central California Area Office
U.S. Bureau of Reclamation
7794 Folsom Dam Road
Folsom, CA 95630

Dear Sirs:

Subject: Comments on the DRAFT REIR for East Bay Municipal Utility District's Supplemental Water Supply Project. (DRAFT REIR cover letter dated Oct. 6, with material received Oct. 17, 2000.)

The DRAFT REIS should be withdrawn until a real project with clear operating criteria meeting EBMUD's project needs has been identified as the preferred alternative. At that time, a revised DRAFT Recirculated Environmental Impact Statement should be submitted for public review and comment.

If the above does not come about, please include my comments in the record of the RDEIR for EBMUD's Supplemental Water Supply Project.

Nowhere in the Draft REIR is there mention of the impact of or mitigation for greenhouse gas releases. Water conveyance structures, pumping plants, and water treatment plants cannot be equipped, constructed, nor operated without carbon dioxide, at least, being produced in substantial amounts. Those amounts can be easily calculated and should play a role in evaluation of alternatives. Mitigation measures can likewise be quantified and made available for evaluation of alternatives.

Sincerely,

Harold Kerster
2372 Rogue River Drive
Sacramento, CA 95826
1-916-363-7837
Save the American River Association
comments of Harold Kerster 11/20/00 (C:EBMUDEIR2000)

RInd13-1

RInd13-2

Responses to Comments of Mr. Harold Kerster

RInd 13-1, Harold Kerster

Reclamation has identified a preferred alternative in this final document. The alternatives considered in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS represent a reasonable range of alternatives to include in the environmental documentation for the project.

RInd 13-2, Harold Kerster

EBMUD and Reclamation will comply with all applicable air quality permits and regulations. Production of greenhouse gases during the construction and operation of the project would be infinitesimal compared with other sources in the project area, particularly automobile traffic and stationary sources such as power plants.

RInd
14

Response to Comment of Mr. William W. Trowbridge

RInd 14-1, William W. Trowbridge

The commenter's preference for an EBMUD delivery from the Folsom South Canal is noted.

11/20/00
ROBERT SCHROEDER
US BUREAU OF RECLAMATION
CENTRAL CALIFORNIA AREA OFFICE
7794 FOLSOM DAM ROAD
FOLSOM, CALIF., 95630

Subject: DRAFT RECOMMENDED EIR/EIS
Sch # 19960220.35

DEAR SIR:

When The Folsom South Canal East Side Project was envisioned the diversion point was to be at Nimbus and was constructed as such when the first stage of the canal was built.

I am aware that EBMUD has a water contract with the Bureau and wants to divert at Nimbus.

As a farmer whose family sold 54.88 acres to the Bureau for right of way to build the canal through our property we think the diversion point should remain at Nimbus for the Folsom South Canal for future water contracts, for agriculture, ground water recharge along the canal and for meeting water supply needs in the future for the area.

Thank you
William W. Trowbridge
2379 Lloyd Lane

RInd14-1

